February 22, 1952 to the tenant. The notice to quit was in the following terms:-

"To Teo Chwee Geok,
or Tenant of No. 202 Orchard Road
Singapore.

Dear Sir,

We hereby give you notice to quit and deliver up possession of the premises known as no. 202, Orchard Road, Singapore, which you hold as a monthly tenant, on the 31st day of March 1952, or at the expiration of the month of your tenancy which shall expire next after the end of one calendar month from the date of the service of the notice on you.

If you desire to remain in occupation of the said premises as from the 1st day of April 1952, we are prepared to grant you a new tenancy at a monthly rent of $130.00 subject to the approval of the Rent Conciliation Board, Singapore. Should you agree please call at our office to signify your consent to such new rental.

Yours faithfully,
Estate & Trust Agencies
(1927) Ltd.
Signed
Manager"

On June 20, 1952 they obtained a consent order from the Rent Conciliation Board fixing the monthly rent of the premises not at $130 but at $120 as from June 1, 1952.

It is common ground that rent at $120 per month was paid and accepted from June 1, 1952. It is also not in dispute that the notice to quit determined the contractual tenancy and that on April 1, 1952 Teo Chwee Geok became a statutory tenant and that the purpose of the notice to quit was to enable the appellants to obtain an increased rent lawfully. It is also, in our opinion, clear from the contents of the notice to quit that the appellants intended to grant to Teo Chwee Geok, a fresh contractual tenancy at the monthly rent of $130/-, if approval was forthcoming from the Rent Conciliation Board.

The sole issue in this appeal is whether on the above facts Teo became from June 1, 1952 the contractual tenant of the premises at the monthly rent of $120/-. If the answer is in the affirmative, it is also common ground that the respondent before us is protected by the Act, having lawfully become the sub-tenant of the appellants, and that the appellants' claim for possession of the premises occupied by the respondent must fail. In order to decide this issue, it is essential to determine the inference that should be drawn from the fact the order of the Rent Conciliation Board was a consent order. Plainly, it must be inferred that the appellants and Teo Chwee Geok had, when they appeared before the Board, agreed to the Board fixing the monthly rent of $120/-. In the context of the appellants' object in sending the notice to quit, which was to obtain a lawful increased rent and not to recover possession of the premises, it is a reasonable inference that the appellants agreed to grant and Teo Chwee Geok agreed to accept a fresh contractual tenancy on the same terms as the original contractual tenancy except the monthly rent which would be $120/- if so fixed by the Board.

It follows, in our opinion, that Teo Chwee Geok was as from June 1, 1952 a contractual tenant of the premises.

The subsequent conduct of the appellants also supports the existence of a new contractual tenancy. The evidence was that from June 1, 1952 to December 1976, a period of 24 years, the appellants accepted payment of the monthly rents at the rate of $120/- per month without any reservation that the rents received were in respect of a statutory tenancy and that in their notice to quit dated November 2, 1976 it was stated that Teo Chwee Geok held the premises "on a tenancy from (the appellants)."

Accordingly, the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Lim Joo Hock & Co.*

TAN CHONG KENG v. VINCENT LIM BAK KENG

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.) January 10, 1986]

[Singapore – Civil Appeal No. 46 of 1983]

Banking – Cheque – Conditional payment of debt – Cheque presented and dishonoured only after action commenced – Action dismissed.

Contract – Loan – Purchase of airline tickets by appellant – Tickets paid by respondent – Payment to

respondent by cheque – Cheque presented and dishonoured only after action commenced – Action dismissed.

Banking – Undated cheque – Valid – Person in possession has prima facie authority to fill in date – Bills of Exchange Act (Cap. 28), ss. 3(4) & 20(1).

This is a claim by the plaintiff/respondent, for the balance of loans amounting to $17,080 made by him to the defendant, the appellant, during the period May 12, 1975 and August 27, 1975. At all material times, the respondent was the administration manager of Cathay Pacific Airways Limited ("CPA") and was authorised to sell airline tickets for and on behalf of CPA. The appellant was the managing director of a tour agency company (the company).

During the said period, the appellant on behalf of the company on 4 occasions purchased from CPA airline tickets totalling $19,398. He gave the respondent 4 cheques all undated and drawn by the Company as payment. CPA allowed credit for 90 days and on the expiry of this said period, the respondent at the request of the appellant paid the amount to CPA. In October 1976, the appellant gave a cheque for $1000 to CPA and obtained a refund from CPA for unused tickets totalling $1,317.25. These sums were appropriated by the respondent in part payment of the amount owing to him, leaving a balance of $17,080. In 1978, the appellant gave to the respondent an undated cheque for $17,080 in exchange for the 4 cheques. In late 1979, the respondent instituted the present action against the appellant for recovery of the amount. At the commencement of the action the cheque had not been dated and presented for payment; it was subsequently dated February 5, 1980 but was dishonoured.

The lower court found that there was a debt amounting to $17,080 owing by the appellant to the respondent and gave judgment for the respondent. The appellant appealed on 2 grounds: (1) that the respondent had accepted the cheque for $17,080 in payment of the debt and that in law constituted a conditional payment which operated to suspend the respondent's remedy for the debt until after the cheque had been presented for payment and dishonoured. As the cheque was presented for payment and dishonoured only after the action had commenced, the action was therefore premature and not maintainable; and (2) that the learned Judge erred in his finding of fact and that no debt was owing by the appellant to the respondent.

Held, allowing the appeal: (1) the second ground has no merit whatsoever. Clearly on the materials before him the learned Judge was fully justified in arriving at this finding as he did and there is no ground for disturbing it;

(2) in law the cheque had been accepted as a conditional payment of the debt, conditional on it not being dishonoured when presented for payment in the ordinary way. Until the cheque had been presented for payment and dishonoured the respondent could not sue on the debt and this action ought to have been dismissed on this ground;

(3) the respondent in this case could have filled in the date on the cheque and presented it for payment long before he commenced the action, which indeed he should have done but did not do.

Cases referred to:

(1) *Allen* v. *Royal Bank of Canada* (1926) 95 L.J. P.C. 17; 41 T.L.R. 625.

(2) *Bolt & Nut Co. (Tipton) Ltd.* v. *Rowlands Nicholls & Co. Ltd.* [1964] 2 Q.B. 10.

COURT OF APPEAL.

Tan Ching Tiong for the appellant.

Low Tiang Hock for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The claim by the plaintiff, the respondent, is simply for the balance of the loans amounting to $17,080 made by him to the defendant, the appellant, during the period between May 12, 1975 and August 27, 1975. At all material times, the respondent was the administration manager of Cathay Pacific Airways Limited ("CPA") and was authorised to sell airline tickets for and on behalf of CPA, and the appellant was the managing director of a tour agency company, Lucky Associated (S) Pte. Ltd. ("the Company"). It is the case of the respondent that during the said period the appellant on behalf of the Company on four separate occasions purchased from CPA airline tickets totalling $19,398, in respect of which, he gave to the respondent four cheques all undated and drawn by the Company. CPA allowed credit for 90 days for payments of these tickets and on the expiry of the said period, the respondent at the request of the appellant paid the amount to CPA. Subsequently, in October 1976 the appellant gave a cheque for $1,000 to CPA, and there were unused tickets in respect of which CPA refunded the sum of $1,317.25. These two amounts were appropriated by the respondent in part payment of the amount owing to him, leaving a balance of $17,080. In 1978, the appellant gave to the respondent a cheque for $17,080, again undated, in exchange for the four cheques which were returned to the appellant. This amount remained unpaid and on September, 12, 1979 solicitors for the respondent demanded payment of the amount of $17,080 from the appellant, and as no payment was made the respondent instituted the present action against the appellant for recovery of the amount. At the commencement of the action the cheque had not been dated and presented for payment; it was subsequently dated February 5, 1980 and presented to the bank for payment but was returned unpaid with two remarks: (i) "refer to drawer" and (ii) "cheque incomplete."

The claim by the respondent was resisted by the appellant, and he raised 3 defences. First, the appellant maintained that there was no amount owing to the respondent. According to him on behalf of the Company he purchased from CPA airline tickets from time to time and it was agreed between him and the respondent that in consideration of the appellant lending moneys to the respondent at the latter's request from time to time, the latter would accept from the Company undated cheques in payment of airline tickets purchased by the Company from CPA and would present the cheques for payment as and when he (the respondent) had paid the debts owing to the appellant. During the period between June 3 and August 29, 1975, the Company purchased from CPA airline tickets to the value of $19,398 and the appellant gave to the respondent four cheques all undated and drawn by the Company for the said amount. The appellant alleged that in pursuance of the said agreement he lent to the respondent from time to time various sums of money for the purpose of placing bets with the Singapore Turf Club, and the four undated cheques were not presented for payment because the total amount represented thereby was equal to the amount owed by the respondent to the appellant on the betting account. In repayment of this amount the respondent returned to the appellant the said four cheques and agreed to pay the outstanding sum to CPA. However, at the request of the respondent, the appellant handed to him the appellant's personal cheque undated for $17,080 to enable the respondent to show it to CPA should he be queried pending the payment of this amount to CPA.

Secondly, the appellant said that if the respondent had paid to CPA the total sum of $19,398, this payment was made on behalf of the Company and therefore the appellant was not personally liable to the respondent for the sum.

Lastly, and in the alternative, the appellant said that if the respondent had lent a sum of $19,398 to him and the outstanding amount owing was $17,080 as alleged, the respondent had received from the appellant a cheque for $17,080 in payment thereof, and as at the commencement of the action the respondent had not presented the said cheque for payment the respondent's claim was therefore premature and not maintainable.

The action came on for hearing before Rajah J. and the learned Judge found that there was a debt amounting to $17,080 owing by the appellant to the respondent and he gave judgment for the respondent. Against that judgment this appeal is now brought.

Before us Mr. Tan on behalf of the appellant proceeded on two grounds of appeal. First, he submitted that the respondent had accepted the cheque for $17,080 in payment of the debt and that in law constituted a conditional payment which operated to suspend the respondent's remedy for the debt until after the cheque had been presented for payment and dishonoured. The respondent, however, did not present the cheque for payment until the action had commenced and the cheque was dishonoured only at that time; the action was therefore premature and was not maintainable. Secondly, he submitted that the learned Judge erred in his finding of fact and that no debt was owing by the appellant to the respondent.

Dealing with the grounds of appeal in the inverse order, we find that the second ground has no merit whatsoever. It was found by the learned Judge that there was a debt of $17,080 owing by the appellant to the respondent. The learned Judge reached this finding on the basis of the credibility of the evidence of the respondent and he rejected the evidence of the appellant on the ground that the latter was not telling the truth. Clearly on the materials before him the learned Judge was fully justified in arriving at this finding as he did, and we see no ground for disturbing it.

The only point of substance in this appeal is the first ground of appeal. In support of his argument Mr. Tan relied on a passage of the judgment of Privy Council in *Allen* v. *Royal Bank of Canada*[1] delivered by Lord Atkinson where he said, at pp. 20-21:

> "In the last edition of *Byles* on Bills, that is, the edition of 1923, at p.232, the rule of law is stated in these terms: "If a bill or note be taken on account of a debt and nothing be said at the time, the legal effect of the transaction is this – that the original debt still remains, but the remedy for it is suspended till maturity of the instrument in the hands of the creditor." And the remedy is equally suspended if the bill or note be given, not by the debtor, but by a stranger."

Next, Mr. Tan referred us to *Bolt & Nut Co. (Tipton) Ltd.* v. *Rowlands Nicholls & Co. Ltd.*[2] In that case, the plaintiffs entered judgment against the defendants in default of appearance without giving credit for the value of a cheque issued to them by the defendants in part payment of the debt two days before the date when the judgment

was entered, and accordingly the judgment, being entered for an amount in excess of that which was then due, was irregular. On that ground, among others, the defendants applied to set it aside. The application came before the District Registrar and he ordered that upon payment of a certain sum in court the judgment be set aside with liberty to the defendants to defend and also ordered that the costs thrown away were to be the plaintiffs' in any event. Against that decision the defendants appealed to the judge in chambers who allowed the appeal, gave to the defendants unconditional leave to defend, but he ordered that the costs of the application to the District Registrar and the costs thrown away be the plaintiffs' in any event and that the costs of the appeal be the defendants' costs in the cause. The defendants appealed against the Judge's order as to costs and the only question before the Court of Appeal was one relating to the costs so ordered by the learned Judge. However, both in the arguments of counsel and in the judgments of the Court of Appeal there was a great deal of discussion on the legal effect of acceptance of a cheque or note for payment of a debt. Harman L.J. in arriving at the conclusion that the defendants should be entitled to all the costs thrown away as well as costs of the application to the District Registrar, the costs of appeal to the Judge in chambers and the costs of appeal to the Court of Appeal said, at p.18:

"Therefore, this acceptance was a conditional acceptance of satisfaction, and the ordinary result of that, as does not seem to be disputed, is as is stated in *Halsbury's* Laws of England (1954), 3rd ed., Vol. 8, p. 212, para. 362, in these terms: 'In the absence of special agreement, a creditor is not bound to accept payment of a debt otherwise than in current coin, or in notes of the Bank of England; and if he takes a bill, note, or cheque in payment, he may either accept it in absolute satisfaction of the debt, in which case he takes the risk of its being dishonoured and can only sue on it' – I have held that that is not the case here – 'or may accept it as a conditional payment only, the effect of which is to suspend his remedies during the currency of the instrument. The instrument in such a case affords a good defence to an action brought before it matures.'"

The same view was expressed by Danckwerts L. J., but more succinctly, at p. 21:

"Now the law is perfectly well settled that, in the absence of some special circumstances indicating that the cheque is accepted in absolute satisfaction of the debt – which I imagine is unusual – a cheque is accepted as a conditional payment of the debt, that is to say, conditional on the cheque not being dishonoured when presented for payment in the ordinary way."

As the matter before the Court of Appeal was solely whether the defendants should be entitled to all the costs, the *dicta* of Harman L. J. and Danckwerts L. J. are purely *obiter*. Nonetheless, what they said represents the ordinary rule governing acceptance of a cheque or note in payment of a debt, which is this: the acceptance by a creditor of a cheque or note in payment of a debt or a part thereof is, in the absence of any specific agreement between him and the debtor or other party concerned, a conditional payment which operates to suspend the remedies of the creditor against the debtor in respect of the debt or the part, as the case may be, until the cheque or note has been presented and dishonoured. This rule is essentially based on an implication by law, and such an implication will not be drawn if there is any agreement or arrangement between the parties to the contrary or any circumstances exist which militate against such an implication.

We now turn to consider the facts in this appeal. In this connection it is essential to examine precisely the circumstances under which the appellant gave and the respondent accepted the cheque for $17,080. Prior to the issue of this cheque, the appellant gave to the respondent four cheques, all undated, for airline tickets totalling $19,398. These cheques were held by the respondent for about 2½ years. Subsequently, the said amount owing was reduced and a further cheque, also undated, for $17,080 being the balance amount owing, was given in exchange for the four cheques which were returned to the appellant. With reference to this cheque, the respondent said in his evidence:

"After 90 days had expired in all the ticket sales I paid to C.P.A. all the monies involved *i.e.* $19,398. I paid them at the request of the defendant.

In 1978 the defendant gave me a cheque for $17,080 (AB37) of Lucky Trading Co. This was to settle the debt on the four cheques. In October 1976 the defendant paid $1,000/- by cheque payable to C.P.A. As I had already paid C.P.A. the full amount this money was taken as cash thru C.P.A. On the unused tickets the C.P.A. refunded $1,317.25. This was taken by me in reduction of the defendant's debt to me.

The defendant knew that I had paid the C.P.A. In exchange for the four undated cheques he gave AB37 (undated) for the balance due to me. He denied owing me the money."

There was therefore evidence from the respondent himself that the undated cheque was given by the appellant and accepted by him in payment of the debt. There was no evidence indicating that the cheque was accepted on other terms (apart from

the evidence of the appellant that the cheque was given to the respondent to enable him to show it to the auditor of CPA should he, the respondent, be queried, which evidence was rejected by the learned Judge) and it follows, in our opinion, that in law the cheque had been accepted as a conditional payment of the debt, conditional on it not being dishonoured when presented for payment in the ordinary way. In our judgment until the cheque had been presented for payment and dishonoured the respondent could not sue on the debt, and this action ought to have been dismissed on this ground.

It is true that the cheque was undated at the time it was given to the respondent. But an undated cheque is nevertheless valid: see section 3(4) of the Bills of Exchange Act (Cap. 28). Under section 20(1) of the Act, when a bill of exchange is wanting in any material particular, such as the date of the bill, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. The respondent in this case could have filled in the date on the cheque and presented it for payment long before he commenced the action, which indeed he should have done but did not do.

We therefore allow the appeal, set aside the judgment of the High Court and dismiss the claim of the respondent. The respondent will have to pay the costs of the appeal and costs of the action in the High Court. There will be the usual consequential order for repayment to the appellant or his solicitors of the deposit paid into Court by the appellant as security for the costs of the respondent.

Appeal allowed.

Solicitors: *Low & Partners; Wee Swee Teow & Co.*

TEO AI CHOO v. LEONG SZE HIAN

[C.A. (Wee Chong Jin C.J., Sinnathuray & Lai Kew Chai JJ.) March 26, 1986]

[Singapore – Civil Appeal No. 14 of 1984]

Contract – Oral agreement – Assignment of mortgaged house – Whether on trust or outright purchase – Findings of fact by learned trial Judge – Whether contrary to evidence.

Evidence – Two directly contradictory versions – Findings of the trial judge – When findings should not be disturbed by appellate court.

This appeal concerned the beneficial ownership of a single storey semi-detached house known as No. 59 Walmer Drive Singapore ("the property") held under a 999 year leasehold commencing from January 1, 1953. The property originally belonged to the respondent's father who assigned it to the respondent in January 1977. The respondent mortgaged it to a finance company, Overseas Union Trust Limited ("OUT") for $80,000. He fell into arrears in his mortgaged repayments and OUT finally decided to exercise their mortgagee right of sale. The appellant, who had known the respondent for eight years, offered to help by obtaining a loan from her employers, the Urban Renewal Authority, to pay the purchase price. However, the respondent paid all the legal fees and the stamp and registration fees relating to both the assignment and the new mortgage. He also paid $500 into the appellant's account with her bank every month. The leasehold was thus transferred under the Land Titles Act (Cap. 276) by the respondent to the appellant on November 5, 1979.

Within two months of the transfer and after the appellant had left for Hawaii on a two-year scholarship course, the respondent broke off relations with the appellant and married a third party one year later. The appellant then took steps to sell the property whereupon the respondent filed a caveat under the Torrens System to protect his interest and possession of the property. On October 13, 1981, the appellant served on the respondent a notice to quit the property.

Both parties then commenced proceedings in the High Court, the respondent seeking a declaration that the appellant was the trustee of the property for his benefit and for an order that she transfer the property to him upon his payment of all monies necessary to discharge the new mortgage. The appellant, on the other hand, asserted that it was an outright sale. The learned trial judge found for the respondent (see [1984] 2 M.L.J. 192). The appellant appealed.

Held, dismissing the appeal: (1) in a case such as the instant case, where there were two directly contradictory versions the acceptance or rejection of which significantly depended on the oral testimony of the protagonists, the role of an appellate court is clear. The court has to accord to the findings of facts of the learned trial judge the greatest respect and ought not disturb them unless it is satisfied that the learned trial judge had reached a wrong decision and that in the context of this case "any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion";